

## **REMARKS**

Applicant would like to thank the Examiner for the careful consideration given the present application, and for the personal interview conducted on April 18, 2006. The application has been carefully reviewed in light of the Office action and interview, and amended as necessary to more clearly and particularly describe the subject matter which applicant regards as the invention.

Claims 1 and 12-24 remain in this application. Claim 24 has been withdrawn as the result of an earlier restriction requirement, and applicant retains the right to present that claim in a divisional application.

Claim 18 was rejected under 35 U.S.C. §112, first paragraph, for failing to comply with the written description requirement. For the following reasons, the rejection is respectfully traversed.

Figure 3, shows a selection unit having a test signal/reaction signal pattern storage represented by unit 52. According to page 14 of the original description, the standard storage unit 52 contains audio test signals T3 experienced during the in situ tuning procedure, and therefore coupled with the individual assessment. A number of possible test signal and assessment records can be stored in the standard storage unit 52 as a database together with the respective identification of the following audio signals. The data has been determined with the standard storage unit 52 through experimentation and experience, and is stored in the unit 52.

As is seen from Fig. 3, an output of unit 52 is connected to a first input of a comparing unit 53 (comparative device 53, page 14 of original specification). Furthermore, according to fig. 3, the input E<sub>3</sub> is operationally connected to the second input of the comparing unit 53, where input E<sub>9</sub> is clearly identified according to Fig. 1 as the control input to the data storage unit 9. Thus, the amended claim language is supported by the specification.

Claims 1, 12-15, 17 19, and were rejected under 35 U.S.C. §103(a) as being unpatentable over Moser *et al.* (WO 85/00509) in view of Engebreston *et al.* (U.S. 4,548,082) in further view of Delisle *et al.* (U.S. 3,809,811. Claim 14 was rejected as above, in further view of Geiger (U.S. 4,807,208). Claim 23 was rejected under 35 U.S.C. §103(a) as being unpatentable over Basseas (6,674,867), as

modified Delisle. .For the following reasons, the rejection is respectfully traversed.

The claims have been amended to recite an apparatus or method for fitting a hearing device where the apparatus uses audio test signals for representing common daily experiences. None of Moser, Geiger, Delisle, or Basseas teach any such signals. Furthermore, the claims recite that the next test signal is selected based on a computation using the assessment data. The user does not directly select the next audio track, as in Moser. Furthermore Engebretson does not teach any dependency of the next track of speech samples on any assessment results, but instead merely teaches that the next speech sample is chosen based on a desire to continue, not on a user assessment (see col. 21, starting at line 60).

Accordingly, the claims are patentable over the references, because the combination fails to teach the invention (i.e., none of the references teach using an assessment based on listening to test signals representing common daily experiences to automatically select a next test signal also representing common daily experiences).

Finally, the Examiner has failed to support the rejections for obviousness because the Examiner has failed to provide legally sufficient motivation for combining the references, and thus the obviousness rejections are improper.

In light of the foregoing, it is respectfully submitted that the present application is in a condition for allowance and notice to that effect is hereby requested. If it is determined that the application is not in a condition for allowance, the Examiner is invited to initiate a telephone interview with the undersigned attorney to expedite prosecution of the present application.

If there are any additional fees resulting from this communication, please charge same to our Deposit Account No. 16-0820, our Order No. 31949.

Respectfully submitted,  
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Date: November 8, 2006      By:           /Robert F. Bodi            
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